REMARKS

The last Office Action has been carefully considered.

It is noted that Claims 1-3, 6-7, 9 and 11-14 are rejected under 35 USC 102(b) and (e) as being anticipated by the U.S. patent application publication to Burlingham in view of the British patent to Born.

Claims 4, 5, 8 and 10 are rejected under 35 USC 103(a) as being unpatentable over the Burlingham reference in view of the Born reference.

After carefully considering the Examiner's grounds for rejection of the claims over the art, applicants retained the claims as they were.

It is respectfully submitted that the new features of the present invention which are not disclosed in the references.

The Burlingham reference discloses a device for optical distance measurement, as specified by the Examiner. Moreover, in the Burlingham reference, in particular in paragraph 19, it is stated that the distance measurement is carried out for example via an optical triangulation or a phase difference measurement or a time-of-flight delay measurement, wherein such a distance measurement is correlated correspondingly with inclination or angle measurement.

Contrary to the Examiner's opinion, the Burlingham reference, however, does not disclose a device for optical distance measurement, which has at least one light source for transmitting modulated, optical measurement radiation and in addition means for measurement of distances via a triangulation method.

The Burlingham reference, however, discloses that the distance measurement is carried out via optical triangulation measurements or phase difference measurements or time-of-flight delay measurements. A combination of these measuring principles is not disclosed in the Burlingham reference, contrary to the Examiner's opinion.

A distance measurement for the determination of the phase difference or determination of the time-of-flight delay presumes a modulated optical measurement signal. A distance measurement via optical triangulation requires no modulation of the optical measurement signal.

In accordance with the present invention, a device is proposed for optical distance measurement, which transmits the modulated optical measurement radiation, that is suitable for a phase difference measurement and in addition has means which allow a measurement of distances via a triangulation process.

This combination of the above-mentioned features is not disclosed in the Burlingham reference and also cannot be considered as obvious from it. What actually

is disclosed in this reference is that it is possible to use an optical triangulation or a phase difference process or a time-of-flight delay process for distance measurement.

The device for optical distance measurement in accordance with the present invention as defined in Claim 1, and the method for optical distance measurement as defined in Claim 11, make possible the combination or alternative use of a phase process or time-of-flight delay process with an optical triangulation process. This is not disclosed in the Burlingham reference and can not be derived from it.

Turning now to the Born reference, it is respectfully submitted that it also does not disclose the new features of the present invention.

The Born reference discloses a proximity fuse, in particular for an armor piercing anti-tank missiles, in which an optical proximity sensor 11 is combined with a capacitative or magnetic sensor 12. As clearly explained in this reference, for example on page 1, starting from line 5, the optical sensor determines the distance via the pulse propagation time or phase measurement of the reflected measurement radiation or a triangulation measurement.

The Born reference also does not disclose a triangulation measurement by a modulated optical measurement radiation. In particular, this reference does not disclose a combination of a phase measurement with an optical triangulation measurement and does not contain any hint or suggestion for it.

In accordance with the present invention, in the inventive device and method a distance measurement is performed via a triangulation process by means of a modulated optical measurement radiation and the distances can be determined both via triangulation measurement and also via a phase difference measurement. These device and method are not disclosed in any of the references, and the references do not contain any hint or suggestion for such the inventive device and method.

It should be emphasized that a combination of a distance measurement with an angle-or inclination measurement as disclosed in the Burlingham reference is not a distance measurement by means of triangulation.

The original claims were rejected over the above discussed references under 35 USC 102 as being anticipated. As explained hereinabove, the references were not disclosed in the features of the present invention as defined in Claims 1 and 11. In connection with this it is believed to be advisable to cite the decision In Re Lindenman Maschinenfabrik GmbH v. American Hoist & Derrick Co., 221 USPQ 481, 485 (Fed. Cir 1984) in which it was stated:

> "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Definitely, the Burlingham and Born references did not include each and every element of the present invention as defined in Claims 1 and 11.

Therefore, the anticipation rejection applied by the Examiner against the original claims based on these references should be considered as not tenable references and should be withdrawn.

The original claims are also rejected as being obvious from the references. It is respectfully submitted that the references do not contain any hint or suggestion for the new features of the present invention as defined in Claims 1 and 11. A person of ordinary skill in the art at the time the invention was made would not have arrived at the present invention from the teachings of the reference as a matter of obviousness. Instead, he would have to fundamentally modify the device and the method of the present invention as defined in Claims 1 and 11, and in particular by including into them the new features of the present invention as defined in these claims. However, it is known that in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision In Re Randol and Redford (165 USPQ 586) that:

> Prior patents are references only for what they clearly disclose or suggest, it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

In view of the above presented remarks and amendments, it is believed that Claims 1 and 11 should be considered as patentably distinguishing over the art and should be allowed.

As for the dependent claims, these claims depend on the dependent claims, they share their allowable features, and therefore they should be allowed as well.

Reconsideration and allowance of the present application with all the claims currently on file is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion

might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,

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